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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,902	02/22/2002	Errington Winfield Hibbert	18638-04-5032	9364
9629 7590 04/18/2007 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			EXAMINER SWARTZ, JAMIE H	
			ART UNIT	PAPER NUMBER
			3694	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/18/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/080,902

Applicant(s)

HIBBERT ET AL.

Examiner

Jamie H. Swartz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group 3 (Claims 29-35) in the reply filed on February 16, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The requirement is still deemed proper and the restriction mailed on January 17, 2007, is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 29-33, and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claims 29 and 33 contain the phrase "operative to" which renders the claim indefinite. "Operative to" on its own is an intended use and not necessarily what is actively carried out.

5. Regarding claims 29-32 and 35 contain the phrase "allow for" which renders the claim indefinite. "Allows for" on its own is an intended use and not necessarily what is actively carried out.

6. Regarding claim 30, the phrase "a random selection of loans" (lines 15-16) renders the claim indefinite. It is unclear who or what is randomly selecting the loans. If a person is selecting the loan this implies that it would be similar to someone pulling a loan out of a hat. If a computer selects the loan it would be based off of a computer algorithm and would not necessarily be a random selection. How can you prove that someone, who is given control over active selection of a loan, has chosen the loan randomly? Alternatively, if a computer selects the loan "randomly," how does it do this? There still is an underlying algorithm to instruct the computer how to "select something randomly." It's actually not truly random.

7. Regarding claim 33, the phrase "randomly search" (line 26) renders the claim indefinite. It is unclear who or what is randomly searching for the loans. If a person is searching for the loan this implies that it would be similar to someone absent-mindedly looking through charts and data. If a computer searches for the loan it would be based off of a computer algorithm and would not necessarily be a random search. How can you prove that someone, who is given control over active searching for a loan, has chosen the loan randomly? Alternatively, if a computer searches for the loan

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"randomly," how does it do this? There still is an underlying algorithm to instruct the computer how to "select something randomly." It's actually not truly random.

8. Regarding claim 35, the phrase "randomly selecting" (line 14) renders the claim indefinite. It is unclear who or what is randomly selecting the loans. If a person is selecting the loan this implies that it would be similar to someone pulling a loan out of a hat. If a computer selects the loan it would be based off of a computer algorithm and would not necessarily be a random selection. How can you prove that someone, who is given control over active selection of a loan, has chosen the loan randomly? Alternatively, if a computer selects the loan "randomly," how does it do this? There still is an underlying algorithm to instruct the computer how to "select something randomly." It's actually not truly random.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 29, 31, 32, and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by US Heffner et al. (20030018558 A1).

11. Regarding claim 29, Heffner teaches *an apparatus facilitating the selection of a loan sample for further analysis* (§§ 240, 288, 363). Heffner teaches *comprising a loan tracking system operative to store transaction-level and loan-level data in association with corresponding transactions; the loan-level data including a computed automated underwriting category* (§§ 40-50, 80, 187-193). Heffner teaches *a sample selection tool operative to display, for a given pool of loans associated with a transaction, the number of loans in each automated underwriting category* (§§ 88-89, 118-119, 159, 123, 378-380, and Table 3). Heffner teaches *the sample selection tool further operative to allow for selection of one or more loans in each automated underwriting category* (§§ 118-119, 159, 365, 380). Heffner teaches *wherein the sample selection tool is operative to display the current loan sample size and the target loan sample size during selection of one or more loans by a user* (§§ 219-234, 263-264, 280-281).

12. Regarding claim 31, Heffner teaches *wherein the sample selection tool allows for explicit selection of loans within each automated underwriting category* (§§ 132, 145).

13. Regarding claim 32, Heffner teaches *wherein the loan-level data includes additional loan-level data fields, and wherein the sample selection tool further allows for searching and selection of loans based on values of at least one loan data field* (§§ 176, 365, and Table 7).

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14. Regarding claim 34, Heffner teaches wherein the apparatus facilitates the selection and ordering of services to be performed on the loan sample (§§ 77, 80, 92, 118-120, 152, 288, 377-378).

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 30, 33, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heffner et al. (20030018558 A1) in view of Etem (1999).

17. Regarding claim 30, Heffner teaches a loan tracking system able to store transaction-level and loan-level data and a sample selection tool to display and allow for selection of loans. Heffner does not teach a random selection of loans. However, *Etem teaches, wherein the sample selection tool allows for random selection of loans within each automated underwriting category* (pg 1-7). Heffner teaches an online centralized financial products exchange system, which applies a data transformation and mapping process to loan information and instantly matching available loans and loan pools with the purchasing criteria of buyers. Heffner teaches a system, method, and computer program product for analyzing, valuating, buying and selling financial products, such as loans. Etem teaches the thought process and purpose of random sampling for Quality

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Control of an overall loan portfolio. It would have been obvious to one of ordinary skill in the art at the time of the to modify Heffner to include analyzing the random selection of loans because as Etem states "statistical inference must be based on random selection." If one would like to figure out the quality of a loan sample it would require random selection.

18. Regarding claim 33, Heffner teaches a loan tracking system able to store transaction-level and loan-level data and a sample selection tool to display and allow for selection of loans. Heffner does not teach a random search of loans in association with a target sample size. However, Etem teaches, *wherein the sample selection tool is operative to randomly search for and select loans associated with a transaction up to the target sample size* (pg 1-7). Heffner teaches an online centralized financial products exchange system, which applies a data transformation and mapping process to loan information and instantly matching available loans and loan pools with the purchasing criteria of buyers. Heffner teaches a system, method, and computer program product for analyzing, valuating, buying and selling financial products, such as loans. Etem teaches the thought process and purpose of random sampling for Quality Control of an overall loan portfolio. Etem teaches details of a sufficient sample size to yield a target level of statistical precision. It would have been obvious to one of ordinary skill in the art at the time of the to modify Heffner to include a random search of loans in association with a target sample size. With any type of analysis or survey the sample size has to be large enough to have to reflect the properties of the entire population, with the appropriate



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confidence interval. Making the sample size larger makes the analysis inconvenient because it requires more processing and the information floods the data pool.

19. Regarding claim 35, Heffner teaches a loan tracking system able to store transaction-level and loan-level data and a sample selection tool to display and allow for selection of loans. Heffner teaches *a method facilitating generation of a target loan sample from a pool of loans for further analysis, the loan pool segregated into a plurality of underwriting categories* (§§ 18-13, 77, 86-89, 105, 118-119, 159, 123, 168, 212, 378-380, and Table 3). Heffner teaches *displaying, for a given pool of loans associated with a transaction, the number of loans in each automated underwriting category* (§§ 88-89, 118-119, 159, 123, 378-380, and Table 3). Heffner teaches *allowing for selection of loans from each automated underwriting category up to the target sample size* (§§ 118-119, 159, 365, 380). Heffner teaches *allowing for searching and selection of loans from the pool based on at least one loan-level data field up to the target sample size* (§§ 219-234, 263-264, 280-281). Heffner does not teach receiving a target sample size or selecting additional loans from the pool up to the target sample size. However, Etem teaches *receiving a target sample size* (pg. 1-7), and *randomly selecting additional loans from the pool up to the target sample size* (pg. 1-7). Heffner teaches an online centralized financial products exchange system, which applies a data transformation and mapping process to loan information and instantly matching available loans and loan pools with the purchasing criteria of buyers. Heffner teaches a system, method, and computer program product for analyzing, valuating, buying and selling financial

products, such as loans. Etem teaches the thought process and purpose of random sampling for Quality Control of an overall loan portfolio. Etem teaches details of a sufficient sample size to yield a target level of statistical precision. It would have been obvious to one of ordinary skill in the art at the time of the to modify Heffner to include a receiving a target sample size and randomly selecting up to that target sample size. Every analysis has a target sample size, as it is imperative to have a target sample size when doing any type of analysis as it gives a limit. A target sample size is calculated before analysis to teach the adequate number needed for analysis. One would never know when they were done getting their samples without a target sample size. With any type of analysis or survey the sample size has to be large enough to have to reflect the properties of the entire population, with the appropriate confidence interval. Making the sample size larger makes the analysis inconvenient because it requires more processing and the information floods the data pool. It would have been obvious to one of ordinary skill in the art at the time of the to modify Heffner to include randomly selecting additional loans from the pool up to the target sample size because as Etem states "statistical inference must be based on random selection." If one would like to figure out the true quality of a loan sample it would require random selection.

20. Examiner's Note: The Examiner has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures

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may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

21. It is also noted that the specific steps used in the invention could be used in real world examples such as for surveying, they are not just used in reference to the loan world.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamie H. Swartz whose telephone number is (571) 272-7363. The examiner can normally be reached on 8:00am-4:30pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jamie Swartz  
April 4, 2007



ELLA COLBERT  
PRIMARY EXAMINER